BEFORE THE APPEALS BOARD FOR THE KANSAS DIVISION OF WORKERS COMPENSATION

DEBRA SPURGEON)	
Claimant		
VS.)	
) Docket No. 230,65	54
PARKWAY CARE HOME)	
Respondent)	
AND)	
)	
INSURANCE COMPANY STATE)	
OF PENNSYLVANIA)	
Insurance Carrier)	

ORDER

The respondent and its insurance carrier appealed the Preliminary Decision dated May 13, 1998, entered by Administrative Law Judge Robert H. Foerschler.

Issues

Judge Foerschler awarded claimant preliminary hearing benefits. The respondent and its insurance carrier appealed that decision and contend claimant failed to provide timely notice of accidental injury. That is the only issue on this appeal.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record compiled to date, the Appeals Board finds as follows:

Judge Foerschler found that claimant sustained personal injury by accident arising out of and in the course of her employment with the respondent on November 3, 1997. Although claimant believes the accident occurred on either October 28 or October 29, 1997, she is a poor historian and November 3, 1997, appears to be the true date of accident. That was also the last day claimant worked for the respondent.

The Judge also found that just cause existed to excuse claimant's failure to provide respondent with notice of the accidental injury within ten days of its occurrence. Claimant

testified that within ten days of the incident she advised both her trainer and supervisor that she injured herself at work. That testimony, however, is disputed.

The Appeals Board finds that claimant did provide respondent with notice of her accidental injury within ten days of its occurrence. On November 4, 1997, claimant saw her chiropractor, Dr. James J. Smith. At her initial visit, claimant wrote on the new patient history form that she had sustained an injury at work. Claimant's supervisor testified that on November 4, 1997, she received a call from someone representing himself as claimant's doctor and who explained that claimant had sustained a neck and shoulder injury. When considering that claimant advised Dr. Smith the day after the accident that she had injured herself at work, the Appeals Board finds that it is more probably true than not that claimant likewise notified respondent of the accidental injury as she alleged.

Although the Appeals Board finds timely notice of accidental injury for reasons somewhat different than the Administrative Law Judge, the final result is the same and the Preliminary Decision should be affirmed.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Preliminary Decision dated May 13, 1998, entered by Administrative Law Judge Robert H. Foerschler should be, and hereby is, affirmed.

IT IS SO ORDERED.

Dated this	day of June 1998.

BOARD MEMBER

c: Luis Mata, Kansas City, KS Stephen P. Doherty, Kansas City, KS Robert H. Foerschler, Administrative Law Judge Philip S. Harness, Director